IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE FIFTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE Dr. JUSTICE G.YETHIRAJULU

WRIT PETITION No. 18476 of 2004

Between:

M/s Penna Hotels Pvt. Ltd., Rep. by its Managing Director,
E.Venkata Subbaiah , O/o. 2/444, Nehru Nagar, Madras Road,
Sankarapuram, Kadapa Town, Kadapa District.

..... PETITIONER

AND

1 The AP. State Financial Corporation Rep. by its Managing Director,
5-9-194, Chirag Ali Lane, Abids, Hyderabad-001
2 The AP. Industrial Development corporation Ltd.,

rep. by its Managing Director, 5-9-58/B, Parisharma Bhavan ,

Fateh Maidan Road, Basheerbagh, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ or direction more particularly on in the nature of Writ of Mandamus, declaring the action of the respondents in excluding the payment of Rs.15.10 lakhs made by the petitioner earlier from the approved one Time Settlement (O.T.S) amount of Rs.151 lakhs vide letter in Ref: AFC/SM-OPD Zone-III/2004-05, dt.10/08/2004, and further rejecting the petitioner's request for treating the payment of Rs.15.10 lakhs as part of down payment of approved O.T.S amount of Rs.151 lakhs vide its letter Dt. 25/08/2004 as illegal, irrational, unjust and arbitrary, besides being violative of well settled cannons of principles of equities, and consequentially to direct the respondents to treat the payment of Rs.15.10 lakhs made by the petitioner earlier, as part of the approved O.T.S amount of Rs.151 lakhs for closing the petitioner's loan account,

Counsel for the Petitioner: MR.K.SARKARAIAH

Counsel for the Respondents: MS.Y.N.LOHITA (SC FOR AP STATE FINANCE CORPORATION)

The Court made the following:

ORDER:

The petitioner borrowed certain amounts from the respondent Corporation for undertaking a hotel business. The petitioner requested the respondents to consider his case under One Time Settlement (for short OTS) Scheme. In response to the said request, the 2nd respondent gave a reply on 28.10.2002, mentioning that in order to process the proposal of OTS Scheme to the Head Office, the petitioner has to make initial down payment of Rs.15,15,000/- on or before 06.11.2002, and if he fails to pay the said amount, it would be presumed that he has no interest to settle the loan account. Accordingly, the petitioner remitted the said amount to the 2nd respondent through the covering letter dated 28.11.2002. Subsequently there was lot of correspondence between the parties, and ultimately, the 1st respondent addressed the 2nd respondent on 10.08.2004 informing that the Board of Directors of the Corporation have approved the proposal for OTS in the meeting held on 31.07.2004 for Rs.151.00 lakhs, excluding the payment of Rs.15.10 lakhs made earlier towards down payment and service charges for OTS, which was adjusted towards the loan account already, and the amount will be payable within 90 days from the date of communication of the approval, together with further OE, debatable if any, on condition the petitioner paying 15% of OTS amount i.e. Rs.22.65 lakhs within 15 days from the date of communication of OTS approval, and the balance amount of 85% of OTS i.e. Rs.128.35 lakhs within 90 days. After receiving the approval from the 1st respondent, the petitioner made payment of 15% of OTS amount through demand draft dated 23.08.2003 subject to consideration of his request for including the payment of Rs.15,10,000/- made by him before the 2nd respondent, forwarding the OTS proposal to the 1st respondent. On 25.08.2004 the 1st respondent sent a

communication, informing the petitioner that the Corporation has examined his request for consideration of the amount of Rs.15.10 lakhs as part of down payment of the approved OTS liability and the said request has not been agreed to. Therefore, he was advised to pay the approved OTS amount and close the account within the stipulated period. The petitioner, being aggrieved by the communication dated 25.08.2004, approached this Court, through this writ petition, seeking to declare that the action of the respondents in excluding the payment of Rs.15.10 lakhs from the OTS amount, as illegal, unjust and arbitrary, besides violative of the settled principles of Equity, and consequently, to direct the respondents to treat the payment of Rs.15.10 lakhs made by him earlier, as part of the approved OTS amount.

2. The learned counsel for the respondents submitted that since the petitioner came forward with a request for OTS, it was considered by the respondents and agreed to settle the loan account on payment of Rs.151.00 lakhs. He further submitted that there is no illegality committed by the respondents in communicating the petitioner that the amount of Rs.15.10 lakhs paid by him is not adjustable as part of OTS amount. He further submitted that the respondents cannot be compelled to agree for a particular amount, and if it is not agreeable by the petitioner, it is for him to go back from the offer made by the respondents, and the respondents would be at liberty to take further steps according to law.

3. After going through the record, it is noticed that there is no statutory obligation on the part of the respondents to accept the offer made by the petitioner. It is for the respondents and the petitioner to come to an amicable understanding for the settlement of the loan account once for all. If the terms imposed by one party are not agreeable to the other party, they have every liberty to take a decision whether to accept those terms or not.

4. In the light of the above circumstances, I do not find any statutory obligation on the part of the respondents to accept the request of the

petitioner, or any statutory right to the petitioner to compel the respondents to accept the request made by him. Therefore, there shall not be any direction to the respondents to adjust the amount of Rs.15.10 lakhs made by the petitioner prior to the acceptance of the proposal of OTS made by the 1st respondent.

5. In the light of the above findings, the Writ Petition is dismissed. No order as to costs.

dsr

ASSISTANT REGISTRAR

To:

1. The Managing Director,

A.P.State Financial Corporation,

5-9-194, Chirag Ali Lane, Abids, Hyderabad-001

2. The Managing Director,

A.P.Industrial Development Corporation Ltd.

5-9-58/B, Parisharma Bhavan,

Fateh Maidan Road, Basheerbagh, Hyderabad

3. Two CD copies.